IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

LETTERS PATENT APPEAL NO. 24 OF 2005

IN

WRIT PETITION NO. 7716 OF 2004

WITH

CIVIL APPLICATION NO. 537 OF 2004

AND

CIVIL APPLICATION NO. 363 OF 2006

Food Corporation of India. .. Appellant.

vs.

Food Corporation of India Workers' Union & Ors. .. Respondents.

Mr. Y. Prabhakar Rao i/by V.G. Mujumdar for Appellant.

Ms. Indira Jaisingh, Sr. Adv., i/by Hutoxi Tavadia for Respondents.

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CORAM: J.N. PATEL &,
A.A. SAYED, JJ.

DATE: 5TH JULY, 2007.

P.C.

. Heard.

2. This Letters Patent Appeal has been preferred impugning the decision of the learned Single Judge which confirms the interim order passed by the National Industrial Tribunal granting a sum of Rs. 50/- per day to DPS workmen engaged in Food Storage Depots of the Appellant.

3. The dispute which has been referred for adjudication to the National Industrial Tribunal at Mumbai is in the matter of parity of wages between departmentalised workmen and the other set of workmen falling in the category of (a) direct payment system, (b) No work,no pay system and (c) management committee system. The dispute has been raised by the second set of workmen claiming parity in wages which is pending adjudication.

4. The terms of reference are (1) "Whether the workers working under Direct payment system, no work, no payment system and the management committee system are entitled for the same pay and other benefits as are available to the departmentalised labour in various depots of FCI throughout the country? (2) If so, to what benefits they are entitled to?".

5. During the pendency of the reference, the learned Presiding Officer of the National Industrial Tribunal passed a common order on 27th May, 2004 on the

application filed by the Party No. 1 i.e. FCI Workers Union and All India Palledar Workers' Federation for interim reliefs against the Party No. 2 i.e. FCI management. The learned Presiding Officer, after examining the issue, prima facie came to the conclusion that the workmen of second category deserve to be granted interim relief in the nature that they will be entitled to Rs. 50/- per day per workman instead of their claim for Rs. 100/- per day per workman and directed the FCI to pay an additional sum of Rs. 50/- per day on all working days to each workman under the Direct payment system, No work No pay system or Management committee system in addition to what they are paid every day and that the said interim relief so granted to the workmen shall be worked out on the basis of working days in a month. It was given effect from 1.12.2003.

6. This interim order came to be challenged by filing a writ petition in this Court which came up before the learned Single Judge. The learned Single Judge of this Court dismissed the petition filed by the appellant by holding that the Tribunal was justified in granting the interim relief which is the subject matter of challenge before us.

7. The learned counsel appearing for FCI submitted that the Tribunal is not vested with any powers to grant any interim relief and, therefore, the impugned

order is passed in exercise of a jurisdiction not vested in law. Secondly, it has been submitted that this interim relief has resulted in additional financial burden on FCI without the matter being adjudicated. Our attention was drawn to the decision of the Supreme Court in the matter between FCI and its workmen in Writ Petition (Civil) No. 422/00 which came to be disposed of by the Supreme Court. The learned counsel for the appellant pointed out to us that when the respondent sought identical relief by preferring a petition under Article 32 of the Constitution of India before the Supreme Court, the same was turned down and the Supreme Court declined to grant any relief to the respondents though it granted leave to the respondents, who were petitioners before the Supreme Court, to agitate the issue before the appropriate forum. Therefore, once the respondents having failed to get relief in the matter of parity of pay between these two categories of workmen employed by them, it was not proper on the part of the learned Presiding Officer of the National Industrial Tribunal to have ventured to give such an interim relief till the matter was adjudicated on merits between the parties. Therefore, it is submitted that the learned Single Judge was not right in dismissing the petition impugning the said interim order.

8. On the other hand, it is submitted by the learned counsel appearing for the respondent union of

workmen that in so far as the reference made by the learned counsel for the appellant to the decision of the Supreme Court is concerned, it has been observed that the dismissal of the petition shall not be construed as an expression of any view on the basis of respective contentions and, therefore, the appellant cannot take any benefit out of the said decision and that the Supreme Court declined to interfere in the matter as it thought proper that the matter requires to be adjudicated as it involves disputed questions of fact and the workmen have an alternative remedy to get their grievance redressed by appropriate forum.

9. Secondly it is submitted that by a catena of judicial pronouncements it is now well settled that the Industrial Tribunal can grant interim relief during pendency of the reference and thirdly it is submitted that there is no quarrel over the issue that the qualitative and quantitative nature of the work extracted from these two sets of workmen is identical of which the learned Single Judge has taken cognizance by referring to the observations made by the Apex Court and in the counter affidavit filed on behalf of the 1st respondent it is not disputed that the nature of work done by the DPS workers and the departmentalised workmen is substantially the same and the workmen serving under the above system are not paid same wages for the same work.

10. It has also been brought to our notice that even if the interim relief is taken into consideration, still, the workmen whose cause is being espoused by the respondent union are not paid on par with departmentalised workmen and further that the benefits of the interim relief in the nature of Rs. 50/- per day is restricted to the number of days the workman is actually engaged and, therefore, it does not in any manner cause prejudice to the appellant.

11. Lastly, it is submitted that the appellant has already complied with the impugned order substantially by paying all such workmen all over the country except in case of 9 depots out of 233 depots in the country which constitutes almost 90% of the work-force.

12. We made a specific query from the learned counsel for the parties as to what is the stage of the proceedings before the National Industrial Tribunal and we have been told that evidence is being recorded.

13. In our view, we have a very limited scope within which we can examine the impugned order in exercise of our jurisdiction under Letters Patent Appeal. Primarily this Court has to see whether any issue arising in the dispute between the parties has been finally concluded or not and we find that the impugned order by way of interim relief granted to the workmen of respondent union which does not conclude any

issue either in favour or against the parties to the reference before the Industrial Tribunal.

14. The second aspect is whether grant of interim relief was justified in the facts and circumstances of the case and we find that grant of such an interim relief was justified for the very reason that the dispute would take sometime for being finally adjudicated and the workmen should not be left to suffer particularly when the Tribunal was prima facie satisfied that the nature of work extracted from them is qualitatively identical to that of departmentalised workmen who have been paid much higher wages compared to these workmen.

15. The contention of the learned counsel for the appellant that there is a settlement between the respondent workmen and the appellant in respect of payment of wages to the departmentalised workmen and the other set of workmen engaged by FCI in which it has been agreed that the respondent would not claim parity in wages in respect of the workmen who are engaged in DPS category and, therefore, till the final award is passed the settlement would bind the respondents and, therefore, they are not entitled for such an interim relief which has been granted by the National Industrial Tribunal. In reply to this contention, it is submitted by the learned counsel for the respondents that in spite of the settlement the appellant has

deviated from it by increasing the wages of the departmentalised workmen by .19 paise per bag which is provided in the settlement itself and, therefore, we find that the interim order impugned by the appellant does not in any manner change the terms and conditions of settlement on this subject and the impugned order rather mitigates the hardship which is being faced by the workmen who are the members of the respondent union.

16. We, therefore, do not find any justification for interfering with the impugned order as it does not suffer from any error or illegality and, therefore, the Letters Patent Appeal is dismissed. No order as to costs.

17. In view of the dismissal of the appeal, both the civil applications do not survive. Therefore, both the civil applications stand dismissed as infructuous.

(J.N. Patel, J.)

(A.A. Sayed, J.)